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19 SENORX, INC.

20
21 IN THE UNITED STATES DISTRICT COURT
22
23 NORTHERN DISTRICT OF CALIFORNIA
24
25 SAN JOSE DIVISION

26 HOLOGIC, INC., CYTYC CORP., and
27 HOLOGIC L.P.,

28 Plaintiffs,

v.

SENORX, INC.,

Defendant.

) CASE NO.: 08-CV-0133 RMW
)
)
) **DECLARATION OF ADAM D.**
) **HARBER IN SUPPORT OF**
) **DEFENDANT'S MOTION FOR**
) **SUMMARY JUDGMENT OF**
) **INVALIDITY AND**
) **NON-INFRINGEMENT**

) Date: August 21, 2009
) Time: 9:00 a.m.
) Courtroom: 6, 4th Floor
) Judge: Hon. Ronald M. Whyte
)

1 I, Adam D. Harber, declare that I am an associate at the law firm of Williams & Connolly
2 LLP, admitted pro hac vice to practice before this Court in the above-captioned matter. I serve
3 as outside counsel for Defendant SenoRx, Inc. The following declaration is based on my
4 personal knowledge, and if called upon to testify, I could and would competently testify as to the
5 matters set forth herein.

6 1. Attached hereto as Exhibit 1 is a true and correct copy of U.S. Patent No.
7 5,913,813.

8 2. Attached hereto as Exhibit 2 is a true and correct copy of U.S. Patent No.
9 6,413,204.

10 3. Attached hereto as Exhibit 3 is a true and correct copy of U.S. Patent No.
11 6,482,142.

12 4. Attached hereto as Exhibit 4 is a true and correct copy of the Declaration of
13 William F. Gearhart in Support of Defendant SenoRx, Inc.'s Motion for Partial Summary
14 Judgment on Non-Infringement, filed May 21, 2008.

15 5. Attached hereto as Exhibit 5 is a true and correct copy of the Declaration of Colin
16 G. Orton, Ph.D. in Support of Defendant's Opening Claim Construction Brief and Motion for
17 Partial Summary Judgment on Non-Infringement, filed May 21, 2008.

18 6. Attached hereto as Exhibit 6 is a true and correct copy of the Declaration of
19 Douglas Arthur, M.D. in Support of Defendant SenoRx, Inc.'s Opposition to Plaintiffs' Motion
20 for a Preliminary Injunction, filed March 28, 2008.

21 7. Attached hereto as Exhibit 7 is a true and correct copy of Ashpole, et al., "A New
22 Technique of Brachytherapy for Malignant Gliomas with Caesium-137: A New Method for
23 Utilizing a Remote Afterloading System," Clinical Oncology 2:333-337 (1990).

24 8. Attached hereto as Exhibit 8 is a true and correct copy of excerpts of Cecil
25 Textbook of Medicine (19th ed., 1992).

26 9. Attached hereto as Exhibit 9 is a true and correct copy of excerpts of Plaintiffs'
27 Amended Responses to SenoRx's Amended First Set of Requests for Admission (Nos. 1-97), as
28 served on SenoRx by Plaintiffs on March 9, 2009.

1 10. Attached hereto as Exhibit 10 is a true and correct copy of excerpts of Webster's
2 Unabridged Dictionary (Random House, 2001).

3 11. Attached hereto as Exhibit 11 is a true and correct copy of excerpts of the
4 transcript of the April 16, 2008 Deposition of Lynn Verhey.

5 12. Attached hereto as Exhibit 12 is a true and correct copy of excerpts of the Expert
6 Report of Lynn J. Verhey, Ph.D. (dated June 4, 2008), as served on SenoRx by Plaintiffs on June
7 4, 2008.

8 13. Attached hereto as Exhibit 13 is a true and correct copy of excerpts of the June
9 20, 2000 Office Action from the Patent Prosecution History for U.S. Patent No. 6,413,204.

10 14. Attached hereto as Exhibit 14 is a true and correct copy of excerpts of the
11 transcript of the June 18, 2008 Deposition of Lynn Verhey.

12 15. Attached hereto as Exhibit 15 is a true and correct copy of the Errata Sheet from
13 the June 18, 2008 Deposition of Lynn Verhey (signed August 28, 2008), as served on SenoRx by
14 Plaintiffs on September 3, 2008.

15 16. Attached hereto as Exhibit 16 is a true and correct copy of excerpts of the
16 transcript of the June 21, 2008 Deposition of Douglas Arthur.

17 17. Attached hereto as Exhibit 17 is a true and correct copy of the Declaration of
18 Philip Z. Israel, M.D. in Support of Defendant SenoRx, Inc.'s Opposition to Plaintiffs' Motion
19 for a Preliminary Injunction, filed March 28, 2008.

20 18. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of Plaintiffs'
21 Amended Disclosure of Asserted Claims and Final Infringement Contentions Under Patent Local
22 Rule 3-6, as served on SenoRx by Plaintiffs on March 23, 2009 (and subsequently amended on
23 April 13 and 14, 2009).

24 19. Attached hereto as Exhibit 19 is a true and correct copy of excerpts of the
25 transcript of the June 9, 2008 Deposition of Paul Lubock.

26 20. Attached hereto as Exhibit 20 is a true and correct copy of excerpts of the
27 transcript of the May 24, 2008 Deposition of James Dempsey.

21. Attached hereto as Exhibit 21 is a true and correct copy of excerpts of Protocol Number S07-002 for “A Multi-Site Prospective, Non Randomized Study Utilizing the Contura™ Multi-Lumen Balloon (MLB) Breast Brachytherapy Applicator to Deliver Accelerated Partial Breast Irradiation: Analysis of Dosimetric Success, Local Tumor Control, Cosmetic Outcome, Acute and Chronic Toxicity, and Clinical Scenarios for Optimal Use” (March 6, 2008).

22. Attached hereto as Exhibit 22 is a true and correct copy of Low-Beer, “The Therapeutic Use of Radioactive Isotopes,” GP 10(6):69-87 (1954).

23. Attached hereto as Exhibit 23 is a true and correct copy of U.S. Patent No. 5,429,582 (Williams), issued July 4, 1995.

24. Attached hereto as Exhibit 24 is a true and correct copy of excerpts of the transcript of the June 17, 2008 Deposition of Colin Orton.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 20, 2009

By: Adam D. Harber

CERTIFICATE OF SERVICE
U.S. District Court, Northern District of California,
Hologic, Inc. et al. v. SenoRx, Inc.
Case No. 08-CV-0133 RMW

I, Kendra P. Robins, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

On May 20, 2009, I served a copy(ies) of the following document(s):

**DECLARATION OF ADAM D. HARBER IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT OF INVALIDITY AND NON-
INFRINGEMENT**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Henry C. Su (suh@howrey.com)	Attorneys for Plaintiffs
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☐ (BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

☐ (BY OVERNIGHT DELIVERY) I placed the sealed envelope(s) or package(s), to the addressee(s) noted above, designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Wilson Sonsini Goodrich & Rosati, 12235 El Camino Real, Ste. 200, San Diego, CA. I am readily familiar with WSGR's practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery the same day as the correspondence is placed for collection.

1 ☒ (BY CM/ECF) I caused such document(s) to be sent via electronic mail through the Case
2 Management/Electronic Case File system with the U.S. District Court for the Northern
3 District of California.

4 I declare under penalty of perjury under the laws of the United States that the above is true
5 and correct, and that this declaration was executed on May 20, 2009.

6 /s/ Kendra P. Robins

7 Kendra P. Robins
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